

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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U.S. DISTRICT COURT
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ROBERT LEMMO,

Plaintiff,

- against -

DET. MICHAEL CERVINI, DET. EDWARD
SPAGNUOLO; and THE CITY OF NEW YORK,

Defendants.

ORDER
08 CV 2641 (RJD)(LB)

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BLOOM, United States Magistrate Judge:

On October 22, 2009, the Court directed defendants' counsel to respond to plaintiff's January 5, 2009 Requests for Production by November 16, 2009. Document 45. By letter dated November 28, 2009, plaintiff states that defendants' counsel has not complied with the Court's Order and requests that the Court compel defendants to produce the following: (1) audio recordings of Internal Affairs Bureau interviews of Detectives Spagnuolo and Cervini; (2) a November 12, 2007 complaint filed against Cervini at the 114th Precinct; (3) Cervini's vehicle assignment sheets; (4) Cervini's memo book entries; (5) police department records of excessive force starting in 2004; and (6) the CCRB file related to this case. Document 50. For the following reasons, plaintiff's motion to compel is denied without prejudice.

In response to the instant motion, defendants' counsel states that "[a]s to the documents listed in plaintiff's letter, defendants were either not in possession of them, in which case they are either in the process of being produced or are being actively sought, or plaintiff is not entitled to them." Document 51. Specifically, defendants' counsel states that the audio recordings, vehicle assignment sheets, memo book entries, complaints of excessive force against Cervini, and the

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CCRB file will be produced in advance of Cervini's deposition, which is scheduled for January 6, 2010. However, defendants' counsel states that there are no materials responsive to plaintiff's request for the November 12, 2007 complaint filed against Cervini, and that plaintiff is not entitled to the underlying CCRB files related to complaints against Cervini because these files pertain to non-parties and contain confidential information.

The Court takes defendants' counsel at his word that no complaint was registered against Cervini on November 12, 2007 at the 114th Precinct, and agrees with counsel that the underlying CCRB files, which do not pertain to plaintiff's allegations against Cervini, need not be produced. However, all other discovery shall be produced to plaintiff by December 28, 2009. If defendants' counsel fails to produce these items to plaintiff by December 28, 2009, plaintiff may renew his motion to compel.

SO ORDERED.



LOIS BLOOM
United States Magistrate Judge

Dated: December 11, 2009
Brooklyn, New York